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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,379	02/13/2007	Raymond John Bacon	508-051,009	2557

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EXAMINER

SHEARER, DANIEL R

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

08/03/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/580,379

Applicant(s)

BACON, RAYMOND JOHN

Examiner

DANIEL R. SHEARER

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-11,13,14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-11,13,14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/13/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/4/2010 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the insert of claims 11, 13, and 14 in combination with the tapered tip of claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 6, 9, 11, 13, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,013,800 to Brunet in view of U.S. Patent Pub. No. 2005/0211241 to Anderson et al. (Anderson).

Brunet shows a dispenser for a gaseous, gas borne or droplet substance comprising a source (2) of the substance, wherein the substance comprises medicament and propellant (Col. 1, ll. 7-20) and the source comprises a reservoir (2) and a release valve (3). The reservoir comprises: a major portion (A in examiner annotated figure below) having a comparatively large cross-section of its substance space and a minor portion (B in examiner annotated figure below) in the form of a tapered tip having a comparatively small cross-section of its substance space and at the opposite end of the source from the release valve (Fig. 1).

Brunet fails to disclose that the reservoir is translucent or transparent and is silent with respect to the material of the container.

Anderson shows a dispenser for a medicament (Pg. 1, paragraph 0001) comprising a reservoir (30), a housing (10), and a release mechanism (29), wherein the reservoir comprises: a major portion (portion of 30 above 35) having a comparatively large cross-section of its substance space and a minor portion (35) at the opposite end of the source from the release mechanism (Fig. 4) in the form of a tapered tip having a comparatively small cross-section of its substance space and further discloses that the reservoir is formed from transparent materials such as glass or plastic (Pg. 4, Paragraph 0094) and the housing has a window (28) to view the level of fluid in the container (Pg. 3, paragraph 0078).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the reservoir of Brunet out of a transparent or translucent plastic or glass and a window in the housing as taught by Anderson to allow the user to view the level of fluid in the container. The combination would result in a user holding the dispenser valve up being able to observe the level of substance in the minor portion and note the comparatively rapid depletion with use of the quantity of substance remaining when the source approaches exhaustion of the substance.

Regarding claim 3, Brunet shows that the minor portion (B in examiner annotated figure below) of the reservoir has a progressively diminishing cross section whereby the rate of fall of the level of substance increases as it is further depleted (inherent effect from diminishing cross section).

Regarding claims 11, 13 and 14, Brunet shows that the reservoir is provided with an insert (C, D in examiner annotated figure below) which substantially reduces the cross-section thereof, includes a uniform cross section (C in examiner annotated figure below has constant cross section) and is tapered (D in examiner annotated figure below tapers).

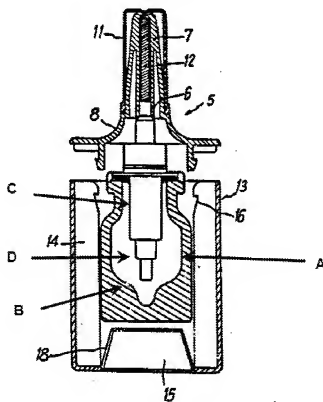


Fig. 2 of Brunet as annotated by examiner

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunet in view of Anderson as applied to claim 6 above, and further in view of U.S. Patent No. 6,866,158 to Sommer et al. (Sommer).

The Brunet-Anderson combination discloses all aspects of the applicant's invention as set forth in claim 6, but fails to disclose that the glass reservoir is enclosed in a plastics material sheath that is a shrink wrapping or an insert molding. Sommer teaches a glass bottle enclosed in a plastics material sheath by insert molding (Col. 3, ll. 20-25) and discloses that enclosing glass reservoirs in a plastics material sheath provides protection against bursting and/or shattering (Col. 1, ll. 16-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the glass reservoir of Brunet as modified by Anderson with an insert molded plastics material sheath as taught by Sommer to provide protection against bursting and/or shattering.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brunet in view of Anderson as applied to claim 9 above, and further in view of U.S. Patent No. 3,506,004 to Mann et al. (Mann).

The Brunet-Anderson combination discloses all aspects of the applicant's invention as set forth in claim 9 and further discloses that the reservoir is enclosed by a robust outer enclosure (Brunet, 13), but fails to disclose that the enclosure is impermeable. Mann shows an aerosol medicament dispenser (Col. 1, ll. 11-14, comprising a release valve (Col. 2, ll. 11-14), and a reservoir (20) that is enclosed by a

robust, impermeable outer enclosure (21) to keep the reservoir isolated and from dust and other contaminants (Col. 3, ll. 21-24. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the outer enclosure of Brunet as modified by Anderson to be impermeable as taught by Mann to keep the reservoir isolated and from dust and other contaminants.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 3, 6, 7-11, 13, 14 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./
Examiner, Art Unit 3754

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754